Apple Suit & Cloak Co., 198 Fed. 407. This amendment also gives the trustee the benefits of the state recording acts. *In re Calhoun Supply Co.*, 189 Fed. 537. Thus it becomes a question of state law as to whether the defrauded vendor has a right to the goods which is superior to that of an attaching creditor, and what has been termed a conflict in the rule applied is nothing more than the result reached as to the rights of a defrauded vendor and an attaching creditor under such state law. *In re Whatley Bros.*, 199 Fed. 362. The trustee is not an innocent purchaser and the attaching creditor cannot defeat the defrauded vendor. *Richardson* v. *Vick*, 145 S. W. 174; *Halsey* v. *Diamond Distilleries Co.*, 191 Fed. 498; *In re Bendall*, 183 Fed. 816. See also 13 COL. LAW REV. 158.

CHATTEL MORTGAGES—SUFFICIENCY OF WORDS USED TO PASS AFTER-ACQUIRED PROPERTY.—T. purchased a stock of groceries and gave a mortgage thereon to secure the notes given for the purchase price. The mortgage contained a stipulation covering "all increase from said stock of whatever kind and nature." T. continued in business and sold all the old stock, and by replacing that sold with new stock soon had a stock of goods different from that originally covered. He made an assignment for benefit of creditors and the mortgagee claims priority over a general creditor who sold the new stock to the mortgagor. *Held.* Mortgage did not include the "additions and substitutions" of stock. *In re Thompson* (Iowa 1914), 145 N. W. 76.

A mortgage of future property is generally void at law. *In re Sentenne & Green Co.*, 120 Fed. 436; *Jones* v. *Richardson*, 10 Met. 481; *Ferguson* v. *Wilson*, 122 Mich. 97; *Deeley* v. *Dwight*, 132 N. Y. 59, 18 L. R. A. 298; *Griffith* v. *Douglass*, 73 Me. 532, 40 Am. Rep. 395; *Chapman* v. *Weimer*, 4 O. St. 481. But in equity a mortgagee of after-acquired property is protected. *Mitchell* v. *Winslow*, 2 Story 630; *Holroyd* v. *Marshall*, 10 H. L. Cas. 191; *Williams* v. *Briggs*, 11 R. I. 476, 23 Am. R. 518; *Des Moines Nat. Bank* v. *Savings Bank*, 150 Fed. 301. Iowa, as stated in the principal case, follows the equitable doctrine that one may mortgage after-acquired property. But the majority of the court and the dissenting judge differed in their opinions as to whether the use of the word "increase" was sufficient to include after-acquired property. The majority, being influenced by the fact that the words were used in a printed blank, held that the words "additions to" or "substituted for" should have been used instead of the "increase thereof." The dissenting judge held that it was not a question of what specific words were used, but whether such terms were used as to show that the parties intended to pass the property, and that the word "increase" meant "added to" as used here and was sufficient to include future property; this view seems to accord with the rule as laid down by Justice STORY in *Mitchell* v. *Winslow*, "Whenever the parties by their contract intend to create a lien or charge either upon real or personal property"—clearly stating that all that is necessary are terms sufficient to show the intend to pass the after-acquired property.

CONVEYANCING—PUBLIC HIGHWAY AN INCUMBRANCE.—The defendant contracted to convey by warranty deed to the plaintiff a farm clear of all in-

cumbrance. There was a public road on the land at the time, legally laid out but not yet opened to use, and unknown to either party. The plaintiff tendered a payment and demanded a conveyance of the land free from the incumbrance of this road, and upon defendant's failure to comply sued for breach of the contract. *Held,* public roads are not embraced in the usual covenants against incumbrances, and that whether such an easement constitutes a breach of the covenant does not depend upon the knowledge of the vendee. *Sandum* v. *Johnson* (Minn., 1913) 142 N. W. 878.

This question was early before the Massachusetts court, which held that any easement over the land conveyed, whether public or private, open or secret, constitued an incumbrance. *Kellogg* v. *Ingersoll,* 2 Mass. 97. The New England states and several others have followed this view. *Lamb* v. *Danforth,* 59 Me. 322, 8 Am. Rep. 426; *Haynes* v. *Stevens,* 11 N. H. 28; *Butler* v. *Gale,* 27 Vt. 739; *Hubbard* v. *Norton,* 10 Conn. 422; *Alling* v. *Burlock,* 46 Conn. 504; *Copeland* v. *McAdory,* 100 Ala. 553, 13 So. 545; *Burk* v. *Hill,* 48 Ind. 52, 17 Am. Rep. 731; *Beach* v. *Miller,* 51 Ill. 206, 2 Am. Rep. 290; *Kellogg* v. *Malin,* 50 Mo. 496. Statutes have changed the rule in Vermont and Illinois. The now more general rule, as enunciated in the principal case, was first stated, less broadly, in *Patterson* v. *Arthurs,* 9 Watts 152, where it was said "the universal understanding of both sellers and purchasers has been in opposition to" the Massachusetts view. The purchaser is presumed to have seen the highway and fixed his price accordingly, and even were this presumption rebutted the highway could not be regarded as an incumbrance within the meaning of the parties. Under *Memmert* v. *McKeen,* 112 Pa. 315, 4 Atl. 544, no incumbrance which affects visibly the physical condition of the property is within the covenant, but even a public highway which had fallen into disuse, the existence of which was not indicated, was held to be an incumbrance in *Howell* v. *Northampton R. R. Co.,* 211 Pa. 284, 60 Atl. 793. In *Desvergers* v. *Willis,* 56 Ga. 515, the court said the application of the Massachusetts rule would produce a "crop of litigation that would be almost interminable." See *Kutz* v. *McCune,* 22 Wis. 628, 99 Am. Dec. 85 (a mill-pond); *Burbach* v. *Schweinler,* 56 Wis. 386, 14 N. W. 449 (a recorded street); *Barre* v. *Fleming,* 29 W. Va. 314, 1 S. E. 731 (public easement between low and high water mark); *Janes* v. *Jenkins,* 34 Md. 1, 6 Am. Rep. 300 (light); *Weller* v. *Fidelity Co.,* 23 Ky. L. Rep. 1136, 64 S. W. 843; *Sisk* v. *Caswell,* 14 Cal. App. 377, 112 Pac. 185; *Haldane* v. *Sweet,* 55 Mich. 195, 20 N. W. 902; *Hymes* v. *Estey,* 116 N. Y. 501. Where the easement was hidden, the rule, though approved, was not applied. *Trice v. Kayton,* 84 Va. 217, 4 S. E. 377, 10 Am. St. Rep. 836; *Haynie* v. *Investment Co.,* 39 S. W. 860 (Tenn. Ch. App). If knowledge is the test, it is difficult to see why a private way is any more an incumbrance than a public way. And the later cases discard the old test and exclude public easements from the operation of the covenant on the ground that they are a benefit, not an injury, to the land. *Harrison* v. *Railway Co.,* 91 Ia. 114, 58 N. W. 1081; *Killen* v. *Funk,* 83 Neb. 622, 120 N. W. 189, 131 Am. St. Rep. 658; *Stuhr* v. *Butterfield,* 151 Ia. 736, 130 N. W. 897 (a drainage ditch); *Schurger* v. *Moorman,* 20 Ida. 97, 117 Pac. 122, 36 L. R. A. (N. S.) 313,

Ann. Cas. 1912D 1114 (irrigation canals). Such a rule of public policy seems necessary in view of the fact that public easements are rarely excepted and parties seldom regard their existence on the land as constituting a breach of the covenant against incumbrances.

CORPORATIONS—LIABILITY OF DIRECTORS FOR SECRET PROFITS.—By a concerted scheme of all the defendants, directors of a corporation, they sold certain mineral lands to the corporation at a price greatly in excess of their intrinsic market value, taking in payment thereof stock of the corporation, thereby gaining control of the corporation and preventing any disclosure to the stockholders of the misappropriation of the company's assets. Later the defendants organized another corporation which they also controlled, and to which all the assets, good will, patents, choses in action, personal property, and business of the first corporation were transferred, the transfer being effected on the basis of an exchange share for share of the stock of the first corporation for the stock of the second corporation. The second corporation later elected a disinterested board of directors and discovered the fraud and now sues to recover the secret profits. The defendants demurred to the bill. *Held,* that the demurrer should be sustained. *United Zinc Companies* v. *Harwood et al.* (Mass. 1914), 103 N. E. 1037.

The defendants were guilty of a fraud against the first corporation for which it could either have rescinded the sale, *Ginn* v. *Almy,* 212 Mass. 486; *Cumberland Coal & Iron Co.* v. *Parish,* 42 Md. 598; *Pope* v. *Valley City Salt Co.,* 25 W. Va. 789, or sued for the secret profits, *Haywood* v. *Leeson,* 176 Mass. 310, 39 L. R. A. 725. But the suit was not brought by the old corporation. A new corporation was created. There was no attempt to consolidate and there was no statute permitting a consolidation. Had there been, the new corporation would have succeeded to all the rights, privileges, and franchises of the old and could have sued on rights of action existing in favor of the old, *Zimmer* v. *State,* 30 Ark. 677; *Meade* v. *N. Y., H. & M. Ry. Co.,* 45 Conn. 199; *Chicago, R. I. & P. Ry. Co.* v. *Moffitt,* 75 Ill. 524; *Miller* v. *Lanchester,* 45 Tenn. 514. But the old corporation still exists. Even though shorn of all its assets, it still retains its corporate entity, *State* v. *Bank of Maryland,* 6 Md. 205; *Price* v. *Holcombe,* 89 Iowa 123, and the mere right to litigate for a fraud is not assignable either in law or equity. It is not a salable asset nor such an interest in property to which the right to sue passes as incidental, *Cutter* v. *Hamlen,* 147 Mass. 471, 1 L. R. A. 429; *Emmons* v. *Barton,* 109 Cal. 662; *Life Ins. Co.* v. *Fuller,* 61 Conn. 252; *Dayton* v. *Fargo,* 45 Mich. 153; *Graham* v. *R. R. Co.,* 102 U. S. 148. The only way therefore in which the defendants can be reached is by bringing the suit in the name of the old corporation, and the demurrer was therefore properly sustained.

CORPORATIONS—WHO CAN SUE ON MORTGAGE BONDS.—Plaintiff owned mortgage bonds executed by defendant corporation, containing a clause providing for sale, suit, or entry upon and management of the mortgaged property by the trustee, after default in payment, on request of one-third of